

1 - VOLUME A -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

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5 STANFORD L. BURRIS, : CIVIL ACTION

6 Plaintiff : :

7 vs. : :

8 RICHARDS PAVING INC., : :

9 Defendant : NO. 04-1469 (SLR)

10 - - -

11 Wilmington, Delaware  
12 Monday, December 4, 2006  
9:25 o'clock, a.m.

13 - - -

14 BEFORE: HONORABLE SUE L. ROBINSON, Chief Judge, and a jury

15 - - -

16 APPEARANCES:

17 ABER, GOLDLUST, BAKER & OVER  
18 BY: GARY W. ABER, ESQ.

19 Counsel for Plaintiff

20 ELZUFON AUSTIN REARDON TARLOV & MONDELL  
21 BY: MATTHEW P. DONELSON, ESQ.

22 Counsel for Defendant

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25 Valerie J. Gunning  
Official Court Reporter

Burris - direct

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1 A. Yes. He said everything was fine.

2 Q. And did you -- how did you think the driving was? Did  
3 you have any trouble driving that truck?

4 A. Mr. Aber, I've been driving since I was eight years  
5 old. That's all I've been around, trucks. I thought I did  
6 wonderful.

7 Q. Okay. And what happened after you finished the driving  
8 test?

9 A. Well, he told me, asked me for my driving record, which  
10 I didn't have. I had to go to the department the next day to  
11 get a copy. So I got a copy, I came back. I started giving  
12 it to him.

13 He was saying, I don't think -- before he looked  
14 at -- before he took the application, he said to me, I really  
15 don't think that we could use you because of your voice,  
16 because I don't think we could hear you on the CB.

17 And if I remember correctly, we went to another  
18 truck that was in the yard, and I did -- I didn't remember at  
19 deposition, but after I started reading some of the record  
20 again, I remember we did -- I did talk over the CB. As a  
21 matter of fact, this truck here is equipped with a CB and  
22 phone and I have no trouble talking. If I get lost, that's  
23 what I do.

24 Q. We'll get to that in a minute.

25 And when you were tested on the CB, who did you

Burris - direct

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1 talk to?

2 A. Had me call back to the base. I talked to the -- to  
3 the receptionist, lady that gave me the application.

4 Q. And after you finished that, did he indicate whether  
5 you would be hired as a truck driver?

6 A. No. He said he couldn't use me because of my voice.

7 Q. And what did you say?

8 A. I started begging him for a job. I told him, if he  
9 can't hire me as a truck driver, give me any kind of job. I  
10 would do any kind of work. I needed it because I told him I  
11 was in the process -- I was about to lose my house and all my  
12 bills were behind and I really needed the job.

13 Q. And what did he say?

14 A. He said no, he just couldn't use me.

15 Q. Did you talk to anybody else at Richards Paving other  
16 than the receptionist and Mr. Moluski?

17 A. No. That was it.

18 Q. Did you ever talk to a Jeffrey Thompson?

19 A. No, sir.

20 Q. Now, after it turned out that you are not going to  
21 be hired by Richards Paving, did you continue to look for  
22 work?

23 A. Yes, I did.

24 Q. And what did you do to look for work?

25 A. I went to a lot of companies, construction companies.

Burris - cross

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1 Q. Do you recall her name?

2 A. No, I don't remember her name.

3 Q. Sir, isn't it true that the truck you test drove on was  
4 a tri-axle truck as well?

5 A. No, it was not. It was a ten-wheeler, ten-wheeler  
6 Mack.

7 Q. Now, did you interview with anybody else besides  
8 Mr. Moluski that day?

9 A. No.

10 Q. Did you drive any other trucks that particular day?

11 A. No.

12 Q. Did you go into any other trucks on that particular  
13 day?

14 A. Not that day, I don't believe I did.

15 Q. This particular truck didn't have a radio in it; is  
16 that correct?

17 A. This truck that I took and road tested, no, it didn't.

18 Q. No, there was no radio in it?

19 A. Not that -- not that truck.

20 Q. So no radio, there wouldn't have been any radio test;  
21 correct?

22 A. Correct.

23 Q. Now, during the test drive, did you have any  
24 conversations with Mr. Moluski?

25 A. Yes.

Burris - cross

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1 A. That was the following day, because -- because I  
2 remembered that when I left that evening, but it was in the  
3 afternoon that I was there for the first time, because I  
4 would have brought the driving record back if I would have  
5 had time to went to the Department of Motor Vehicles. That's  
6 why I knew -- that's why I remembered that had to be in the  
7 afternoon.

8 Q. Because the DMV is actually right down the road from  
9 Richards Paving, is it not?

10 A. No, it's not. It's right there by -- the DMV is  
11 on DuPont Highway. The place of business is at Basin Road.

12 Q. Sir, what time did you arrive on the second day?

13 A. As I think about it, I believe -- I believe it had to  
14 be in the afternoon, because it seemed like it was a  
15 Wednesday that I went to the Department of Motor Vehicles.  
16 They don't open until 12:00, so it had to be in the  
17 afternoon, as you asked me that now. I believe it was in the  
18 afternoon.

19 Q. Sir, just stepping back to the first day briefly, I  
20 know you testified there was no radio in the truck that you  
21 were test driving; correct?

22 A. Yes.

23 Q. And Mr. Moluski never asked you to speak on the radio  
24 at any time on the first day; is that correct?

25 A. That's correct.

Burris - cross

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1 talked -- after I talked on the CB, then he told me he  
2 couldn't use me, I stood there and kept begging and begging  
3 him to give me a job.

4 Q. Sir, you recall being deposed on June 14th, 2006;  
5 correct?

6 A. I guess. I don't exactly remember.

7 Q. I'm going to read a line from your deposition  
8 transcript. I actually have a copy here, if you'd like to  
9 take a look at it.

10 A. Yes. Let me see it, please.

11 MR. DONELSON: May I approach the witness, your  
12 Honor?

13 THE COURT: Yes, you may.

14 (Mr. Donelson hands a deposition transcript to  
15 the witness.)

16 BY MR. DONELSON:

17 Q. Sir, I'm going to turn your attention to Page 32. All  
18 right. I'm going to turn your attention to line 5.

19 Do you have that?

20 I'm going to read the question and the answer and  
21 you tell me if I'm incorrect. All right?

22 "Question: At any time on the second day, did he  
23 ask you -- did he, meaning Mr. Moluski, ask you to use the  
24 radio or the CB?

25 "Answer: No, not to the best of my knowledge."

Burris - cross

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1 Did I read that correct?

2 A. That's what it says here.

3 Q. Sir, I'm going to turn your attention to Page 54  
4 of your deposition transcript, and I'm going to turn  
5 your attention to starting at line 3, and ending on  
6 line 16. Okay?

7 "Question: Where was the CB that you were  
8 speaking from?

9 "Answer: I don't remember exactly where, but it  
10 wasn't in the truck when we took the road test. I remember  
11 that, because it wasn't -- I don't remember a CB being in the  
12 truck."

13 Did I read that correctly?

14 A. Yes.

15 Q. Next question: And we're referring to the second day,  
16 because you've already testified that you didn't use the CB  
17 on the first day, but referring to the second day, my  
18 question is: "Where did you use a CB on the second day?

19 Your answer: I don't think I used a CB on the  
20 second day."

21 Is that correct? Did I read that correctly?

22 A. That's what it says here, but it's not exactly true.

23 Q. So you lied during your deposition testimony. Is that  
24 what you are saying?

25 A. No, I didn't lie. I just got some of the facts --

Thompson - direct

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1 A. Yes, that's correct.

2 Q. And all information concerning this event, as far as  
3 the Department of Labor was concerned, came from you?

4 A. Yes.

5 Q. Okay. Now, I've handed to you a document which  
6 has three things at the top of it. The first section we  
7 talked about, uncontroverted facts, read those to yourself,  
8 please.

9 (Pause.)

10 THE WITNESS: Okay.

11 BY MR. ABER:

12 Q. Now, does that refresh your recollection of what  
13 you communicated with the Department of Labor since you  
14 were the only one that could have provided these facts to  
15 them?

16 A. To a certain degree, yes.

17 Q. Okay. And having your recollection refreshed, do you  
18 remember what you told them about Mr. Burris having been  
19 asked to use a CB radio?

20 A. Well, they actually told me that he had used a CB  
21 radio.

22 Q. And did you deny that?

23 A. I told them I didn't know.

24 Q. Okay. So that was an undisputed fact, wasn't it?

25 A. I don't know. They told me.



Moluski - cross

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1 gears and you have to stop the truck and start all over  
2 from the beginning, it's stressful. It's stressful on the  
3 guys. I like everybody that comes in to pass a driving  
4 test.

5 I just chatted back and forth about that, about  
6 his past work experience, and he also explained to me about  
7 his issues, that he had some issues with his throat, that he  
8 had been out of work for about 18 months.

9 Q. Were you able to, in your conversation with Mr. Burris  
10 while you were in the truck, were you able to hear him during  
11 that conversation?

12 A. Yes. You had to listen closely, but I was able to hear  
13 him, converse back and forth with him.

14 Q. Now, what type of truck was Mr. Burris being test  
15 driven on?

16 A. He was test driven on a tri-axle, either a Mack or a  
17 Ford.

18 Q. You have to forgive me. I don't know one truck from  
19 another. What type of truck is this?

20 A. Tri-axle has two back wheels on each side. It has one  
21 up front. Then it has a third axle that works in the middle,  
22 so when you have weight on, you drop the third axle. That  
23 helps take the load of the roads.

24 We pay taxes after taxes for the privilege of  
25 having a third axle so you can put 20 tons on it. Tri-axle